

APPENDIX D-7

INTELLECTUAL PROPERTY PROVISIONS

SUPPLIES AND SERVICES

NOT REQUIRING DELIVERY OF DATA

Article

- I. Authorization and Consent
- II. Notice and Assistance Regarding Patent and Copyright Infringement
- III. Reporting of Royalties
- IV. Patent Indemnity - Supplies and Services

I. AUTHORIZATION AND CONSENT.

The Government has given its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

II. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

- (a) The Contractor shall report to the Government through the Laboratory, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government when requested by the Government or the Laboratory all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government or the Laboratory.
- (c) This clause shall be included in all subcontracts.

III. REPORTING OF ROYALTIES.

If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Laboratory, the Contractor agrees to report in writing to the Government through the Laboratory during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or the Laboratory of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

IV. PATENT INDEMNITY - SUPPLIES AND SERVICES

If the amount of this contract is in excess of \$10,000, the Contractor shall indemnify the Laboratory, the Government, and their officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except U. S. letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government or the Laboratory of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government (**with notice to the Laboratory**) of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

- (i) an infringement resulting from compliance with specific written instructions of the Laboratory or the Government directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
- (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or
- (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.